



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/225/2017

Present: Hon'ble Ms. Jaya Das Gupta, Administrative Member

GOUTAM BEHERA

VS

UNION OF INDIA & ORS.

For the applicant : Mr.N.Roy, counsel

For the respondents: Mr.M.K.Bandyopadhyay, counsel

Heard on : 29.3.2017

Order on : 29.3.2017

O R D E R (ORAL)

The applicant Shri Goutam Behera has approached the CAT seeking the following reliefs :

- a) to issue direction upon the respondent to quash, cancel and/or set aside the impugned order, dated 22.8.2015 forthwith;
- b) to issue further direction upon the respondent to consider grievance of the applicant for joining duty forthwith;
- c) any other order or orders as the Ld. Tribunal deem fit and proper.

2. The applicant was appointed on 20.1.98 on compassionate ground for the post of Gatekeeper at Ranaghat. He was served with a charge sheet on 22.5.08 (Annexure A/2) under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 i.e. a major penalty charge sheet. The articles of charge framed against the applicant are as follows :

"Statement of Article of charge framed against Sri Gautam Behara, Gatekeeper under SE/PW/BT.

ARTICLE - I

That the said Sri Gautam Behara, while functioning as a Gatekeeper of gang NO. 11/BT under SE/PW/BT during 19.3.2004 to till ate is unauthorisedly absent from duty from 19.3.04 to till date without any intimation to the concerned authorities as are enumerated in the statement of imputation of the misconduct or misbehaviour in support of the article of the charge.

Thus by the above act Sri Gautam Behara failed to maintain absolute devotion to duty and acted in a manner which is unbecoming of a Railway servant and which tantamount of gross misconduct and misbehaviour by violation of Rules 3(i), (ii) and (iii) of Railway Service

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(Conduct) Rules, 1966 and there by rendering himself liable for disciplinary action being taken against him as per Railway Servants (D&A) Rules, 1968 as amended from time to time.

ARTICLE - II

NIL

ARTICLE - III

NIL"

3. As per the submission of the Id. Counsel for the applicant a full enquiry was held as per rules where the applicant participated. The penalty order dated 22.8.2015 was issued removing ^{him} _{dwz} from service. The full text of the order is set out below :

- "To
Sri Gautam Behara, Gatekeeper
Under SSE/PW/BT.

(Through: SSE/PW/BT)

REMOVAL NOTICE

After considering the case file the fact finding of inquiry report in respect of major penalty charge sheet No. EG/17/BT(GB) dated 22.5.2008 and your defence brief I have decided that you are guilty of charges levelled against you in the above mentioned charge sheet.

Accordingly you are hereby removed from Railway Service with immediate effect as a disciplinary measure.

A copy of the findings of the Disciplinary Authority is enclosed herewith.

You are directed to hand over the Railway property if any in your possession to SSE/PW/BT. It is mentioned here that the Railway quarter if any, under your possession if not vacated by you within 15 days, you will make yourself liable to the Administration for eviction therefrom.

If you wish to make an appeal against the above penalty you can do so within a period of 45 days of receipt of this order to Sr.DEN/II/SDAH, E. Rly. through proper channel. While doing so you should keep in view the provision of Sub. Rule (1) & (2) of Rule 21 of Railway Servant under D&A Rule, 1968

Receipt of this order is to be acknowledged.

Enclosure : As above.

(G.L.Meena)
Assistant Engineer,
Eastern Railway, Barasat
&
Disciplinary Authority."

4. Against such removal notice the applicant made an appeal to the Appellate Authority on 29.9.15 but his appeal was dismissed as the Appellate Authority on 22.4.2016 upheld the order of removal from service passed by the

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Disciplinary Authority. Against such rejection of the Appellate Authority the applicant has approached CAT under Section 19 of the A.T.Act on 1.2.2017.

5. It is apparent on going through the records that the applicant has not exhausted all the remedies available to him under the Railway Servants (Discipline & Appeal) Rules, 1968 before approaching CAT i.e. he has not made a further statutory application to the Revision Authority for consideration of his case. As per Section 20 of the A.T.Act, 1985 a Tribunal shall not ordinarily admit an application until it is satisfied that the applicant has availed of all the remedies available to him under the relevant service rules as to the redressal of grievance.

6. Hence with the consent of both the parties it is directed that the applicant will make a revision petition to the Revisionary Authority preferably within one month who on getting such a petition shall dispose of the revision petition strictly as per law within the time period of three months and intimate the results thereof to the applicant within one week thereafter. If there is a delay in filing the revision petition as in the meantime the applicant has approached the CAT, such delay will be condoned by the revisionary authority.

7. I have not entered into the merits of the case and all ^{points} ~~points~~ are kept open for the respondent authorities.

8. The OA is accordingly disposed of with the above direction. No costs.

(JAYA DAS GUPTA)
MEMBER (A)

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